

1904-044 Chancery Causes: Nancy J. Kimberling vs. Samuel H. Duff
Lee Co.

Fields, Young, Guyer, Fannon, Bartley, Gibson

2 Plats

CA - Estate Dispute
T - Property

To the Honorable H. A. W. Skeen, Judge of the Circuit Court
for Lee County, Virginia.

Your complainant, ^{*Nancy J. Kimberling*} Nancy J. Kimberling, humbly complaining
shows unto your Honor, that ^{*she*} ~~she~~ is a resident of Lee County,
Virginia, and has been resident therein all ^{*Nancy J. Kimberling*} her life; that ~~she~~ ^{*she*}
is the daughter of Robert & Margaret Duff, deceased; that
in the year 18 ^{*her*} ~~your~~ (complainant's father), Robert Duff
died seized and possessed of a valuable tract of land lying
on Wallens Creek, Lee County, Va., adjoining the lands of
Martin Drake, ^{*Joseph*} ~~William~~ Duff and others; that in the year 18 ~~_____~~
about twenty six years ago your complainant's brothers and
sisters had the lands of their father, Robert Duff partitioned
and assigned among and to those entitled thereto, among ~~and~~
whom was your complainant, ^{*Nancy J. Kimberling*} whose share in her fathers estate c
consisted of about three different tracts of land.
One of these tracts of land adjoins the lands of James D.
Duff and Samuel H. Duff.

Your complainant ~~shows~~ unto your Honor, that each one of
the heirs of the said Duff went into immediate possession of
their land. Your complainant ~~went~~ into immediate possession
of ^{*her*} ~~her~~ shares, As stated herein, one of your complainant's
shares adjoins the lands of Samuel H. Duff, on the west line.
For twenty five years, your complainant ^{*has*} ~~has~~ had free and ex-
clusive possession of the land, ~~has~~ cut fire wood, made rails,
cut and hewed house logs, barn logs, telephone posts and sold
timber up to and along the recognized division and marked line
between your complainant and the said Samuel H. Duff.
The said Samuel H. Duff during the long term of the more than
twenty five years past, acquiesced in your complainant's posses-
sion, advised ~~them~~ to sell timber standing along the line and
near to it, saw your complainant ~~exercise~~ ^{*has*} ~~exercise~~ their ownership o
over it and on it and never at any time during that long ~~period~~
period, enter a protest until a short time ago.

Your complainant was greatly surprised to hear that the sa
said Samuel H. Duff had sold some of her valuable timber stand-
ing and growing on your complainant's land.

Your complainant's on investigation found men at work cutting the timber and converting it into staves. Your complainant's took prompt action to recover her property by ordinary warrant before a Justice of the Peace asserting ^{her} title to the timber and land, but not content with selling your complainant's timber, he has entered upon ^{her} land and has cut other valuable timber down upon the land which your complainant's had left standing for the purpose of keeping up the necessary repairs of ^{her} farm, for fire wood and other purposes and is intending to convert it to his own use to the great damage and loss of your complainant's. *Continue from day to day is* Said Duff if not restrained will cut down destroy and convert to his use more of your complainant's timber. Your complainant's did not know the said Samuel H. Duff was claiming ^{her} land until he commenced cutting down and destroying ^{her} timber. *Complainant's charge said Duff has no just claim to this land* The tract of land is very valuable both for its timber and its soil, and is worth two hundred (\$200.00) dollars to your complainant from its location and other considerations. *Said Duff is husband of Nancy J. Kitching*

The object therefore, of this bill is to obtain an injunction, (^{your complainant's} ~~as~~ without any remedy at law to prevent this great waste and destruction of ^{her} timber), and ~~to~~ they suffer irreparable loss and damage.

The premisses considered the prayer of your complainant is, therefore that the said Samuel H. Duff, be made a party defendant to this bill, that he be required to answer the ~~same~~ same but not on oath, that is waived, that the said Samuel H. Duff, his agents, attorneys, and all others persons be prohibited, *perpetually as he has no right to said timber or land* restrained and enjoined from cutting said timber on your complainant's land, or disposing of it in any other manner, until a further order of your Honors Court, that a receiver be appointed to take charge of said timber already cut and the ~~same may by consent of the parties be sold at private sale,~~ *as it will greatly damage* ~~if not at public sale,~~ awaiting the determination of this course, and if mistaken in this ^{her} special prayer, your complainant's ask for all such other further and general ~~relief~~ relief as suits ^{her} case and to equity is meet and proper.

May , Commonwealth, writ Subpeena issue and your
complainant will ever pray.

Nancy J. Kimberling
W. H. Kimberling } *Comps.*

J. D. Carter

Virginia, Lee County,

To-wit,

This, day personally appeared before me *Gas. M. Durham*
a Justice of the Peace, for the county of Lee and the state
of Virginia, ~~*and W. H. Kimberling*~~ *Nancy J. Kimberling* who made oath, that the
facts as stated in this bill so far as they depend upon ~~their~~
own knowledge are true and so far as they depend upon informa-
tion derived from others, ~~they~~ *she* believes them to be true.

Given under my hand on this the 28th day of March, 1903.

Gas. M. Durham

Defts costs incurred
 Clerk \$1.30
 Wits 3.38
 Comm. 9.50
 atty. 15.00
 \$29.18

Plffs Costs:
 Nursery Chk. \$5.3200
 Exing " 1.75
 Suborgor 6.50
 Taking Dep 9.50
 Wits 6.00
 Shffs .50
 atty 15.00
 \$44.57

Nancy J. Kimberling

S. H. Duff
 Nancy J. Kimberling,

Vs. In Chancery.

Samuel H. Duff.

1903, 2nd May sales Spa
 executed & D.M.
 " 1st June sales D.M.
 Confd & Carver set
 for hearing

Defts:

~~Nursery Chk. \$5.3200~~
~~Exing " 1.75~~
~~Suborgor 6.50~~
~~Taking Dep. 9.50~~
~~Wits 6.00~~
~~Shffs .50~~
~~Att'y 15.00~~
~~\$44.57~~

Deem final May term
 1904
 asl

Samuel H. Duff, his agents and employees are each hereby enjoined from cutting and removing the timber mentioned and described in the bill; but this order is not to be effective until the plaintiffs or some one for them shall execute a bond in the sum \$200 before the clerk of Lee County Circuit Court conditioned as required by law. J. D. Connor is hereby appointed a receiver to take charge of and to sell the timber sect, but said receiver before acting under this order will execute a bond before said clerk to faithful discharge the duties of said receivership. March 31, 1903.

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The demurrer and answer of Samuel H.Duff to a bill exhibited against him in this Honorable Court by Nancy J.Kimberling.

Respondent says that the said bill is not sufficient in law to call upon him to answer in this Honorable Court and for cause of demurrer he assigns the following:-

1st. The bill shows a disputed ownership to the land in controversy, and fails to allege that the plaintiff was in the actual possession thereof;

2nd. The bill fails to show that the defendant is insolvent, and that full and complete compensation in damages could not be had at law for all the injuries suffered by the Complainant, even if the land in dispute were hers;

3rd. This is an attempt upon the part of the plaintiff to try an action of ejectment in a court of Chancery, the bill on its face showing that the whole controversy grows out of a disputed boundary of two tracts of land, one owned by the plaintiff and the other by defendant, It therefore follows that plaintiff has a complete remedy at law.

And not waiving his said demurrer, but relying and insisting thereon, should other and further answer be required, respondent says that it is true that he and the complainant are each children and heirs at law of Robert and Margaret Duff both of whom are now deceased, and it is further true that at the time of his death the said Robert Duff was seised of valuable lands lying on Wallens Creek in Lee County, Virginia; it is further true that after the death of said Robert Duff, voluntary partition of his lands was made among and between his heirs at law, and for the purpose of making said partition they selected as Commissioners to make said division the Honorable Carr Bailey, Thomas D.Duff and Harvey Young, whose duty it was made by the agreement entered into between said heirs to assign dower to Margaret Duff, the widow of the said Robert Duff, and to partition the residue of said land among his several children, and pursuant to said agreement, said Commissioner met

and performed the duties required of them, submitted a report thereof to the parties interested, which is dated on Sept. 21st, 1877, and a copy of the same is herewith filed as a part hereof marked "Exhibit A". An inspection of said report will show your Honor that said Commissioners partitioned two tracts of land, the smaller one of which alone is it necessary to refer in this answer. This tract is laid off on said plat into six parts marked respectively 1, 2, 3, 4, 5 and 6, though in fact assignments were only made at that time of lots 1 and 2, the residue thereof being held together. It will be seen that lot No. 2 in this tract was assigned to the plaintiff or her husband George W. H. Kimberling, containing eight and one-third acres, after deducting therefrom the part of the church and school house lot embraced within its boundaries. Said lot so assigned to the plaintiff is bounded as follows to-wit: Beginning at a stake in a field, Stickley's line, corner to lot No. 1, and with lines of the same N. 30 W. 90 poles to a stake on Martin Drake's line and with the same westwardly $16\frac{1}{2}$ poles to a stake, thence S. 30 E. 90 poles to a stake on the said Stickley line, and with the same westwardly $16\frac{1}{2}$ poles to the beginning. As soon as said partition was made the said plaintiff and her husband took possession or rather took control of the lot so assigned to them. No actual possession by enclosure has ever been had by them of said land; and the other heirs took like control of the residue of said land. Some time afterward the residue of said tract which had been thus partitioned was allotted among the other heirs of the said Robert Duff and in this allotment Mrs. Mary Moreley became the owner of lot No. 1 of said tract, and your respondent became the owner of lot No. 3, and each took possession or control of the same claiming and using to the extent of the boundary thereof, that is, the said Mary Moreley took and held the strip of land on the east side of said tract marked on said Commissioner's plat No. 1, and the same is $15\frac{1}{2}$ poles wide and bounds the said plaintiff's lot on the east, and your respondent took control of lot No. 3 which is $14\frac{1}{2}$ poles wide and bounds the plaintiff's lot of the west. Deeds of partition were not executed at the time of said partition and for a long time

thereafter, but on the 24th day of March, 1902, deeds of partition were duly executed in accordance with said partition, and respondent's brothers and sisters together with their husbands and wives conveyed to your respondent on that day said lot No. 3, in which the said complainant and her husband joined. This deed is duly recorded in the Clerk's office of the Lee County Court and a copy thereof is herewith filed as a part hereof marked "Exhibit No. 2"; and at the same time a deed was made to the complainant for said lot No. 2, containing $8 \frac{1}{3}$ acres more or less and having a width as your respondent remembers of $16 \frac{1}{2}$ poles, but said complainant has not yet recorded her deed and therefore your respondent cannot file a copy of it with this answer.

Respondent says that it is true that during the long term which has elapsed since said partition has been made, he has acquiesced in said partition and in the possession of the complainant of the lands so assigned to her, and that he never entered any protest whatever to her using her said land as she saw proper, nor does he object to it now; but respondent denies that he has ever at any time sold to any person valuable timber standing or growing on the plaintiff's land, but while this is true complainant and her husband have not been equally careful of the rights of your respondent.

Your respondent will now show your Honor that he sold two trees standing from one to two poles from said line on his own land, to a man by the name of Early; that the said Early cut the same and afterwards the plaintiff brought suit against the said Early before a justice of the peace and by some means unknown to your respondent got a judgment for the value of the same. To this suit your respondent was not a party, had no means of controlling it and even if he had, the amount for which said judgment was given being below the appellate jurisdiction of the County Court, said judgment as he is advised was final. Your respondent denies that he was selling, or ever sold any of the complainant's timber, and he denies that he has entered upon her land and cut other valuable timber down which complainant had left standing for the purpose of keeping

up the necessary repairs of her farm, for fire wood and other purposes, and he denies that he has any intention to convert any of her timber at any time to his own use; he denies, that if not restrained, that he will cut down, destroy and convert to his own use any of the complainant's timber. It is true that since said justice trial said respondent has cut one small chestnut tree, but this tree stood on his own land and something like two poles or more from the division line which separates his land from the complainant's.

Respondent again most emphatically denies that he has ever cut and removed, sold or intended to cut remove or sell any of the plaintiff's timber, and here expressly denying ever allegation of said bill not herein before admitted or denied, he prays that said injunction be dissolved, said bill dismissed and that he be awarded his costs in this behalf most unjustly expended.

C. T. Duncan)
Geo. P. Bridger) -P. Q.
Orin & Noel)

Virginia, Lee County, to-wit:

This day Samuel H. Duff personally appeared before me, James M. Durham, a justice of the peace in and for Lee County, and made oath that the facts stated in the foregoing answer, where stated upon his own information are ~~True~~ and where stated upon information derived from others, he believes them to be true.

Given under my hand this the 25th day of April, 1903.

James M. Durham J.P.

Samuel H. Duff
adv. { In Chy.

Nancy J. Kimberling

Answer of Deft.

Filed April 29th 1902

A. B. Menzies Clerk

Defts, Costs re-
covered.

Wits. 3.38

atty. 15.00

Comrs. 9.50

Clerk 1.30

\$29.18

Nancy J. Kimberling - - - - - Plaintiff

vs.

In Chancery.

Samuel H. Duff - - - - - Defendant,

This cause came on this day to be heard upon the papers formerly read herein and the report of L.M. Carmical, the surveyor directed by a former decree in this cause to execute the order of survey made in the cause, together with exhibits and depositions of witnesses filed with said report, and was argued by counsel;

On consideration of all of which it is adjudged, ordered and decreed by the Court that the injunction granted by the Court in this cause on the 31st, day of March, 1903, be and the same is hereby dissolved, and it is further adjudged, ordered and decreed that the bill of the plaintiff be dismissed, and that the defendant recover of the plaintiff his cost in this cause expended.

And the Clerk of this Court is hereby directed to allow the parties to this cause to withdraw from the file such original title papers as may have been by them filed in the cause.

And this cause is stricken from the docket.

Nancy J. Kimberling
vs. The City
S. V. Driff

Gen. C. B. No. 7,
Page 488.

Enter this Paper
H. A. W. 81 cm
May 78, 1904

recovery of the plaintiff his cost in doing so and expenses

that the bill of the district be dismissed, and that the defendant

10/10/10

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 1808

1870

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The deposition of G.W.H. Timberling and
others taken before me

a Special Commissioner

in Chy appointed for the purpose by the
Circuit Court of Lee Co Va, pursuant
to notice, on the 17 day of Oct 1903 at
the dwelling house of Robert Duke Comfort
Lee Co Va, which when taken are in-
tended to be read as evidence on behalf
of Nancy J. Timberling in a certain
suit in Chy now pending in the
Circuit Court of Lee Co Va wherein
Nancy J. Timberling is Complainant
and Samuel H. Huff is Defendant,
Rust. J. E. Carter atty for Compt.

G.W.H. Timberling a witness of lawful
age, being duly sworn deposes and
says:

Quest 1 State your age, residence and
occupation?

Ans My age is 54 - and my residence is New
Comfort P.O Lee Co. Va. and my occupa-
tion is a Physician

Quest 2 Please state if you are the husband
of Nancy J. Timberling?

Ans Yes Sir.

Quest 3, State if you are acquainted with the
share or lot of land now in controversy
between Nancy J. Timberling and S. H. Huff?
If so, how long have you known it?

Ans Yes Sir I am, 26 years

Just. Please describe this lot of land, and tell who has been in possession of it, and all you know or remember about it.

Ans. It joins the Bob Robinsons land on the East the Mike Robinsons land on the North and the Sheln land on the South and some H. Duff lands on the West, I think it was over 20 poles wide, there lacked a fraction of being 13 acres when Bailey assigned it to me and my wife, I think there was something allowed for a road running through it, also for $\frac{5}{6}$ acres taken up by Church lot lying within said boundary. My wife has been in possession of it 26 years, and has kept the tax paid up for the same length of time.

Just. Please state whether or not you were present on this morning (Oct. 17, 1903) and saw the line traced by Mr. Carmichael on N. 28 $\frac{3}{4}$ W. If you were, please state whether or not, that was the line between Nancy J. Rinebecking and Samuel H. Duff, assigned by Mr. Carr Bailey and other Commissioners and if she has exercised continued and exclusive possession over said land since?

Ans. It was the line that Carr Bailey run and she has had possession of it - and exercised possession of it ever since.

Just. Please state whether or not Samuel H. Duff has not had full knowledge of such possession and continually

acquiesced in same, and actually advised the sale of timber up to and along this line?

Ans. He has.

Quest. Please state if you know when the said Duff first commenced cutting timber on the Nancy J. Kimberling land, if he has cut timber?

Ans. In the fall of 1902.

Quest. What is the value of the timber cut and how much remains uncut for if any, that is how much money yet due on any timber cut?

Ans. From five to eight dollars.

Quest. Please state if you remember the number of acres out of which this lot was drawn?

Ans. 72 acres.

Quest. I hand you what purports to be a deed executed by Samuel H. Duff and others bearing date March 24, 1903, conveying a lot or parcel of land to Nancy J. Kimberling. You will please state whether or not this purported deed is in accordance with the assignment made by Carr Bailey and others, also what portion of this land is contrary to & covers.

Ans. Of course it don't correspond with the original assignment made by Carr Bailey, the 1903 deed covers a part of it, but does not extend to the original West line.

Just. Do you mean by the "Originally West line,"
the line run by Carr Bailey and others,
if so, about how much do the $19\frac{1}{2}$ poles
called for in said deed, fall short of
the "West line"?

Ans. Falls short something over a pole.

Ques. Did Carr Bailey mark the line he ran
N 30 W.

Ans. Carr Bailey did the surveying, Thomas
Duff did the marking.

Ans. Do you think the trees we saw marked
along the line N $28\frac{3}{4}$ W that we ran this
morning - were marked by said Duff
at the time Bailey ran this line.

Ans. Yes, sir, they were, I walked along by
the side of him and saw him
mark them.

Ques. Do you think the East line we ran N $25\frac{1}{2}$ W
at or near the East line Bailey ran when
making partition above referred to, S.

~~Exception. The above question is excepted to because~~
~~absurd and indefinite. Cf. for context.~~

Ans. It commences near the place and
runs near the line some places and varies
off some places, near the road it runs
tolerably close,

Ques. Did we begin East of the point Bailey commenced.

Just. We did not commence far enough East to make
any material difference I didn't think. We
commenced right at it nearly I think.

Ques. How does Bailey make the North & south line
of this tract - in his description of ~~same~~, it,

5
if he made any description or report of
it.

Ans. I don't know, I said in my deposition
I thought it was about twenty poles, I
don't remember.

Cross Examination by S. H. Duff Esq.

Ques Have you always recognised the Bailey
line commencing at the stake in
stickley's line, as being the best line
of the lands in controversy, S.

Ans. It has always been the recognised line
between me and S. H. Duff since Bailey
ran it. We never had any dispute over
it.

Ques Did you ever cut, use, or see any timber
East of this line to any body?

Ans. No Sir.

Ques Did Bailey run a straight or Zigzag
line when running this west line
of land in controversy.

Ans. I suppose he aimed to ^{run} a straight
line.

Ques Are the marked trees on a straight line.

Ans. I will answer it this way; sometimes
he would mark a tree on Nancy J.
Kimberling's side of the line, and
sometimes on Samuel H. Duff's side
of the line.

And further this deponent says the
rest.

J. H. H. Kimberling

John Fields another witness of lawful age
being first duly sworn, deposes and
says:

Just. Please state your age, residence
and occupation?

Ans. About 56 years old. Residence in Leed
va near Comfort P. O. Farming is
my occupation.

Just. Please state whether or not you
are acquainted with the tract of
land now in controversy between
Nancy J. Kimberling and Samuel H.
Wuff?

Ans. I am. I have worked over the land.
My first work on it was some 25 or 26
years ago. I hewed a set of house
logs for Nancy Kimberling, and a set
of smoke house logs about one year
afterward. About 2 years back I hewed
a set of barn framing.

Just. Were you present on Oct. 17, 1903 and
see Mr. Carrical trace a line
called the "Bailey West line" of this
tract of land in controversy?

Ans. I was present.

Just. Was this timber you mention above
standing and growing along this
line, that is the timber you have cut
for building purposes for the said
Nancy J. Kimberling at the time you
above mentioned?

Ans. Yes sir. it was standing along this line.

Just. Please state if Samuel H. Duff was present and saw you cut any of this timber, and if you had any conversation with said Duff what was it?

Ans. Yes sir he was present, and saw me at work. He asked me what I would take to haul a sill for him.

Just. While you were on this land to day did you observe any timber cut down on this land, if you did what do you consider a fair cash value for the timber cut?

Ans. I saw one tree cut, if it was mine I would not want to ask more than \$3⁰⁰, three dollars for it.

Just. Did you ever at any time through all the long period of time you mention as having worked on this tract of land ever hear Samuel H. Duff say one word as to claiming this land in controversy up to or about the time of the institution of this suit.

Ans. I never did.

Just. Did you or not see Samuel H. Duff at work on the other side of this line while you would be at work for Nancy L. Kimberling?

Ans. Yes one time, as I stated while ago. I don't recollect any other time.

X Examined by ~~witness~~

Ques Mr. Fells, do you know any thing about the original Bailey line you speak of here in your deposition, except as it was detailed to you by G.W. H. Kimberling?

Ans. All I know about it, these men here run it out this morning and said it was the Bailey line.

Ques Was there some log~~s~~ you speak of cut by your East or west of the main Road leading through by the school house.

Ans. It was part East and part west of the road.

Ques Did Mr. Kimberling say any thing at that time to you about where the line runs between him and Mr. Duff, if so was Mr. Mr. Duff present.

Ans. He told me his line run through ^{Kimberling's} ~~between~~ where ~~we~~ I and Mr. ~~Duff~~ ^{Duff} were at work. Mr. Duff was in talking distance. I don't know whether he heard him tell me or not. He was not right with us. And further this deponent says ^{his mark} not. John Fuld sr

Claims 2 days
attendant \$1.00

Harvey Young another witness
for the Defendant says:

Mr. Young was present when
Cor Bailey surveyed and assigned
the land, a part of which is here
in question to the heirs of Robert
Duff and ~~was~~ would you know
his report then made it shown
to you.

and

I was present when all the boundary
and division lines were run except
the division lines on the 50 acre
tract. And they were agreed upon,
but night came on and I had
to go home and left Mr. Bailey
to finish the work and Mr. Duff also
I suppose. I did not talk to Mr.
Duff after that, but left him
with Mr. Bailey. Mr. Bailey came
by my house next day and told
me they had finished the work in
the way that they had agreed upon.

Ques.

I know have your writing
purporting to be the original
Bailey report, examine it and
state where said paper is
the report made by you and
Mr. Bailey at that time.

Exception: Complainant objects to the filing of this
report, because she says it is not the original
report made by Cor Bailey and others

in the division and partition of the lands of Robert Duff deceased. & for Compt.

Ans. Yes, sir, that is the report agreed upon, & I do not observe any changes in it, and I file said report as part of my deposition made exhibit "A"

Cross Examination by Compt.

Just. Were you present when the Commissioners signed this report?

Ans. I was not. I authorized Mr Bailey to do it.

Just. Where has this report been since the 21 day of Sept, 1877, as it shows it was not recorded till the about the 7 day of Nov, 1902,

Ans. This deponent says it is not. I don't know where it was.

Just. Did you, or not, ever see any of the lines run in the 50 acre tract?

Ans. At the time of the division?

Ans. I did not.

Just. Did you or not hear anything said about the 22 acre tract at the time you were making the partition of this land? If so what was it?

Ans. There something said among the heirs that the 22 acres were to remain undivided and sold to pay an indebtedness against the estate.

Just. By way of refreshing your memory I will ask you if Nancy L. Kimberling share was extended through the 22

are tract to the Martin's Drake line?

Ans. Not to my knowledge.

And further this deponent says it
not,

Harvey Young

clerk 1 day.
attendant \$ 0.50

Miss Mary Duff another witness &
lawful age being first duly sworn
deposes and says.

Ques Did you help write the deed to
the different heirs name in the
Car Bailey report.

Ans. I did.

Ques Who assisted you in the writing
of said deed, and what did
you have to make them from.

Ans. Mr. Durham assisted me, the
deeds were based on the Bailey Report
but the field plats were given in by
+ Mr. Sproles.

Ques I know hand you a writing
purporting to be the Bailey
report, please state if this is
the paper you make the deeds
from.

Objection. Complainant here makes some
objections to the above question and the
introduction of the Bailey Report as
made to Harvey Young's deposition

(All exceptions also written are said report)
Carter for Cause

Ans. This is the plot we made the deed
from.

Ques. I know hand you a writing
purporting to be the deed which
Mr. Durham and you made for
Mr. G.W.H. Hembury, please
Examine said deed and state
if it made now as it did
when it was written.

Exceptions: The above question is objected to
because it seeks to impeach a deed
for fraudulent alteration as is
shown on its face and is not the
proper way or manner to impeach
or avoid a deed. Carter for Cause.

Ans. I did not write it all. I wrote
the latter part of it with ^{the} two exceptions
of two places which I did not write.
I wrote in two places 16½ poles, while
it is written here 18½ poles in both
places in which I had written 16½ poles.

Ques. These two exceptions you speak
of above ~~part~~ ^{appear} in the part of said
Deed that was written by you are
they not?
Ans. Yes Sir.

Cross Examination by the Court.

Just. Do you know ~~how~~ whether ^{or not} it was written "16½" or "19½" poles at the time this deed was signed by the heirs whose names are signed to the said deed?

Ans. I do not know positively that it was, but to the best of my knowledge it was.

Just. How is it you so well remember it was written "16½" poles at the time this deed was signed

Ans. I can not tell you positively how I remember it,

And further this deponent saith
Not,

Mary L. Duff.

Claims 1 days attendance \$ 0.50

22 miles

24

Comm. 6 hours @ 75 = 4.50

Filed Nov 3rd 1903

A/B Munsey Clerk

Nancy J. Kimberling

or } Depositions

S. H. Duff

Filed Nov 3rd 1903

A/B Munsey Clerk

Met pursuant to adjournment at Powell
Institute Ice Co va on the 27 day of
April 1904.

Exant, J. H. Carter, atty for Complainant

" J. C. Noel of Counsel for defts.

A. N. Joyner, a witness of lawful age
being first duly sworn, deposes and says:

Just:

Please state your age, residence and
occupation?

Ans

I am 27 years old, farming my business chiefly
and reside at the Ford Scott Co va

Just, 2

Are you acquainted with Mrs. Nancy J. Kimberling
and Samuel H. Deff, the parties to this suit?

Ans

I am

Just:

Please state if you had a conversation
with Samuel H. Deff, relative to this
controversy, if you did, please state
what it was, when it was, and where it
was?

Ans

I did. I was making staves on what Mr
Deff claimed to be his land, and he
told me that I had better move them
staves soon as possible or Mr Kimberling
would give me trouble over it as he said
that tree but to convince you just step
here & I will show you the line to convince
you that this tree is mine, he showed
me a dogwood stake over in the field
down next the fence, and showed two marks
on the tree that I had cut and had on
a standing tree by & placing the marks on
the tree I had cut, and said that the line

run from him a straight line to a stake
standing west of the church, and beyond
a large tree I had already cut. He stated
that Mr Timberley had cut a heck some
what North west of this line and on his
lands - and that he would have loved him
then, but his wife prevailed with him against
it - beside he had cut other timber.
which ended our conversation on the subject
at that time - But afterwards Mr Duff told
me that if we had the judgment to pay
he would show Timberley whose lover
it was. said he would cut timber and
let him jump him "

Just.

You speak of paying the judgment;
What do you mean by that?

Ans.

That was the judgment given by the
court rendered against Joe Esley & others for cutting
two white oak trees that stood on his land.

Just.

Were these two trees, the same trees you
bought of Samuel H. Duff for stones,
and for which the said judgment
was rendered in favor of the Timberleys?

Ans.

The foregoing question and any answer
thereto, is excepted because:

(1) It is directly leading; it would have
been as easy to have asked the witness
for what trees had the said judgment been
rendered.

(2) Because immaterial, and irrelevant:
as such a judgment no matter what

it was, could in any way affect the rights of the parties in this controversy
J. C. Noel for Def.

Ans. yes sir they were

Ques. You speak of Mr. Duff pointing out to you a line - what were the appearance of the stakes and marks and other indications of a line - fresh or ancient?

Ans. The stake looked like it had not been there very long, I think he said it was drove there when Mr. Sproule ran the Bailly line, may be a year or two before that.

Ques. Please state if you remember, in what year this conversation occurred?
In September 1902, don't remember the day of the month.

X Examination.

Ques (1) In your examination in chief you speak of Timberling obtaining judgment - against Joe Early and others for two trees which you had purchased of Mr. Duff, please state what Timberling it was who obtained said judgment? was it Nancy J. Timberling, or G. W. H. Timberling? State also whether said judgment - was rendered in Court or before a Justice of the Peace?

Ans. It seems to me that the judgment was given in his Wifes name, and rendered by a Justice of the Peace.

Ques (2) Do you know^{or} whose land the two trees stood, for which said judgment was rendered?

Ans No. Mr Duff said it was his land & Mr Kimberling said it was his.

And further this deponent says not,
H. W. Duggins.

Attended
2 days
\$1.00

Afram N. Fannon another witness of lawful age being duly sworn deposes and says:

Just. What is your age and where do you live?

Ans I am going on 53. I live in Lee Co.

Just. Are you acquainted with the parties in this suit, and how long have you known them?

I am acquainted with them, have known them ever since the War of 1861.

Just. Are you acquainted with this land in controversy, or cause of the controversy between these parties - if so how long have you known it?

Ans About 13 years I have known it.

Just. Who has been in possession of it, and what acts of ownership and possession have been exercised by the one in possession?

Ans. I lived to him one summer I hope him saw timber all along where the line run. When he showed me the marked timber. He claimed that to be his strip of land. I worked there with him.

Q. While you and G.W.N. Kimberling were at work on this land, did or not Mr. Samuel N. Duff come and enter into a commission with you about the timber?

A. The foregoing question and any answer thereto is excepted to because directly leading, and there is no evidence so far as these depositions go, to show that witness and G.W.N. Kimberling ever worked on said land.

J.C. Noel for Deft.

A. Yes sir he came where me & Mr. Kimberling was working.

Q. Please state, whether or not, G.W.N. Kimberling cut poplar timber and or other timber along this line, recognized as the line between the land of Nancy J. Kimberling and Samuel N. Duff?

These foregoing question is excepted to because it assumes a recognized line without locating said line, or without proving the existence of such line, or by whom recognized.

J.C. Noel for Deft.

This is poplar timber that I knowed of cutting along that line that he showed me.

Q. Was there any claim made then by Samuel N. Duff of this timber or land?

A. No sir none at all that I heard of.

Q. How close does said N. Duff reside to this land? How close then?

Ans. About 2 or 300 yards.

Quest. About how long has it been since the time you worked on this land cut timber and sawed etc for the Krumpholts Comptain this case?

Ans. About 13 years ago.

Quest. You speak of being shown a line; were there or not any indications of a marked line between them?

Ans. Yes sir there was a marked line.

Quest. What was the appearance of the marks on the timber at that time, ancient or new?

Ans. There was a marked back, marked with old marks, and then was deadwoods marked.

Quest. Did or not, Samuel N. Duff ever make any objections or enter any protest against any of these acts done by you or Krumpholtz while at work on this land?

Ans. No sir. he did not.

Quest. ~~By way of refreshing your memory~~ I will ask you, if Samuel N. Duff did not come to where you were at work and talk about what fine timber it was?

Ans. Yes sir he did.

X Examination.

Quest 1. How close do you live to the land in controversy?

Ans. Something near two miles.

Quest 2. When did you last see the line

which you say was shown to you by Mr. Kimberling as the line between his wife's land and the land of Samuel H. Duff?

Ans About twelve months ago.

Ques 3) What purpose did you have in looking at the line about twelve months ago?

Ans. Me and Mr Kimberling was talking about where I worked for him helping him saw timber 13 years ago. he wanted to know if I remembered the place, me and him went out looking around.

Ques 4 Did Mr Kimberling show you the line again, when you was there about twelve months ago?

Ans Yes sir.

Ques 5 Was Mr. Samuel H. Duff present at either time when Mr. Kimberling showed you the supposed line?

Ans. No sir he wasnt with us.

Ques 6 How many poplar trees did you and Mr. Kimberling cut close to the line you speak of?

Ans - I did not cut narry one I hope saw up two.

Ques 7 How much timber did Mr Kimberling have sawed up on the land now in dispute, while you

worked for him?
Ans I can't tell how many feet

Ques About how many trees, then?
Ans Two poplars was all that I hope work upon the land.

Ques Have you done any work on the land in the past few years for Mr. or Mrs. Timberling, or seen any one else at work on the disputed land during that time?

Ans No sir I haven't.

Ques Has any part of the land in controversy been enclosed by a fence, or in cultivation in any form, since you have known it?

Ans No sir.

Ques The whole tract of land is an open woodland on which any one can enter at pleasure, is it not?

Ans There is no fence around none of it.

Ques Did the poplar trees of which you have testified in this deposition, stand on the east or west side of the Church road, leading from the main Waller's Creek road to Mizpah Church?

Ans The West side of the road, as near as I can remember. It was a double poplar one fell towards the east and the other towards the west.

Ques ~~How near to~~

About - how close did the trees stand to the road?

Ans. May be about 100 yards as near as I can remember.

Ques How close were they to Mizpah Church?

Ans. They stood on this end, I don't know how far from the church; they were on this end of the strip Mr Kimberling claimed

Ques How close did they stand to the fence?

Ans I guess it was 100 yards or more.

Ques Do the stump of the trees still standing?

Ans yes sir the last time I was there.

Ques About 13 years ago, when you worked for Mr Kimberling, was poplar timber considered very valuable here on Wallen's creek?

Ans They were buying up a good deal of it, I don't know what it was worth

Ques What became of the timber from the poplar trees you speak of?

Ans. Mr Richardson sawed it up, at the saw Mill

Ques Was the ~~marked~~ timber along the line shown you by Mr Kimberling, marked to show a straight - or crooked line?

Ans
1 day?
attendance
\$0.50

A straight line through.

And further this deferred - sayeth not.

A. N. ^{his} ~~may~~ Fannous

Mr. Parthy, another witness of lawful age, being first duly sworn deposes and says:

Just. What is your age, residence and occupation?

Ans. 54 years old in act. Farming my occupation residence in Lee Co Va.

Just. Are you acquainted with the parties to this suit and the ^{property} ~~land~~ in dispute between them?

Ans. Yes Sir

Just. How long have you known the property and who has been in possession and exercising ownership over it and on it since you first knew it?

Ans. I have known it 15 or 20 years. I remember that is G. W. H. Kimberling has exercised ownership of it.

Just. What visible acts of possession and ownership has he exercised over and on it since you first knew it?

Ans. He put me up there to work and showed me his land and told me not to get on the other side

So much of the above answer as undertakes to detail ~~statements~~ made by G. W. H. Kimberling to witness, not made in the presence of defendant, because hearsay.

J. B. Hall for Deft.

Just. What kind of work did you do on this land?

Ans. Chopping & sawing wood & hauling it off for Mr. Kimberlings. Making rails.

Just. Was it only one time and in the same year, or was it at one or different times you performed the labor on this land?

Ans. I worked different times for him.

Just. Please state whether or not you have cut wood and made rails along the west-line between, that is the line running in a North^{only} and South^{only} direction between these parties?

Ans. I have cut wood right along that line and made rails too, made them.

Just. How close does Samuel H. Duff reside to this land in dispute and the place where you cut wood and made rails; Give your best estimate?

Ans. 2 or 300 yards I reckon.

Just. Did the said Samuel H. Duff at any time enter any protest or objections to you working along this line - in other words did he claim the land or timber?

Ans. ~~He~~ No sir, if he did I have no recollection of it.

Just. You speak of hauling wood off of this land; is it not a fact, you have to pass Samuel H. Duff's house in hauling from this land to Kimberlings?

Ans. Yes we come right a long by his house - along the road.

Just. Is it or not a fact that Samuel H. Buff
Cut wood or timber upto and along
this line ~~pointed~~ on the west side of
it, as pointed out to you by
G. W. N. Kimberling,?

Ans. I don't know.

Just. Is it or not a fact, that Samuel H. Buff's
has ~~had to~~ come over this land with
wood and other timber, from his land
on the west of it?

Ans. I don't know.

Just. Do you know of a large Chestnut tree
now lying on said land near the
Wizhek Church?

Ans. Yes Sir.

Just. Please state if that tree is enclosed by
the line as pointed out to you by
G. W. N. Kimberling?

Ans. It is.

X Examination.

Quo. When was the last time you
cut and hauled wood, or made rails
on that part of the land that is
in dispute?

Ans. Some 4 or 5 or 6 years.

Quo. About how many trees do you suppose
you have cut on the disputed part of
the land?

Ans. I could not tell. I cut more wood than I made
rails.

Does About how many rails do suppose you have made for timbering on the disputed part?

Ans Not so powerful many

Does Can you say as a matter of fact that no one else than G.W. & or honey J. timbering has ~~cut~~^{had} wood cut and rails made on said land?

Ans If they have I don't know it.

Does Do you undertake to say that no one else has done so? that is cut wood or made rails on the disputed land?

Ans I don't know some one else might have done it.

So for then you know Samuel H. Duff may have cut wood and ~~hailed~~ made rails on this land, may he not?

Ans I don't know, he might have done it.

Does No part of this land has been under fence or in cultivation, so far since you have known it, has it?

Ans No Sir.

Does Do you know who was in actual possession of this land, when this suit was brought?

Ans No Sir.

1 day attend
\$0.50

Sub further this deponent says not

J. W. Bartley
mark

Lucy Gibson another witness of
lawful age being duly sworn first,
deposes and says:

Just. What is your age and where
do you live?

Ans. I live in Lee Co and going on 56 years old.
Just. Are you acquainted with the parties
in this suit and the land in
this controversy?

Ans. Yes sir.

Just. Please state whether or not you
have ever been on this land, what
you did there and by whose direction?

Ans. I have cut wood & made rolls there, under
the direction of S. W. H. Kimberling.

Just. How long ago has it been, and how
often?

~~Just~~ Ans. several times, and seven or eight years since
I worked up there.

Just. Did you or not see a marked
line between the parties to this
suit?

Ans. I have seen marks there where they said was a line
Just. Were you, or not, shown where to work
and ^{how} far to go, in order not to get
over the line from the east side
or Kimberling's side?

Ans. I worked just where they showed me to work
and did not get over the line.

Just. Did you or not ever work for
Samuel H. Duff west of the line pointed

out to you by G.W.H. Kimberling &
J.P.D., how far from the line

Ans. I have worked just above where they said
the line was

Just. Please state whether, or not, Samuel
H. Huff while you were at work
for him, ever pointed out
this line to you?

Ans. He would tell me the line was right close to
where we worked, just this side of where we
were working.

Just. While you were working on the east
side of this line by the direction of
G.W.H. Kimberling, did Samuel H. Huff
at any time enter any objection or
order you to quit, or lay and
claim to the land?

Ans. No sir.

Just. Please estimate, how far Samuel H.
Huff resides from this land?

Ans. About 400 yards or a little over
X Examination.

Does. You have worked for both parties
on the disputed land here?

Ans. Yes sir. I have worked on each side where they say
the line is.

Does. Who told you where the line is?

Ans. They both told me where the line runs through
their same & hap both.

Does. Did they point out to you the line?

Ans. They would sort of show where they said the line was.

Does Did they both agree as where the line was?

Ans I reckon they did these times I did not hear any racket about it when I was working there.

Does Who was present when Duff sorter showed you where the line was?

Ans I don't know as any body but just heard him along.

Does What did he say to you about it?

Ans why he just said the line was just right along there just below where we were working.

Does Where were you working?

Ans I was working on his land up there in the ridge, he said it was his.

How long has it been since you worked for Mr. Duff on the land in dispute?

Exception

The above question and its answer is excepted by Complainant.

Because, witness has not stated that he ever worked for Mr. Duff on this disputed land, and therefore assume a fact as not heretofore stated by the witness.

Ans I guess it has been 4 or 5 years. I R. Carter.

Does

While working for timberling did ^{you} work close along the line in dispute or some distance away from it?

Ans.

It was off some piece from where they are disputing where the line is now

Quest.

Reexamined by the plff.

You state in your answer to the following question by Mr. Hall, "How long has it been since you worked for Mr. Duff on this land in dispute?" Your answer, "I guess it has been 4 or 5 years", now I ask you if you fully understood Mr. Hall's question, and if you ever did work for Mr. Duff on this disputed land?

Ans.

I have never worked on that part in dispute, but have worked on each side of it. Where they said the line was.

1 days att'd
\$6.50

And further this deponent says not.
Wyley^{his} Gibson
Mark

Nancy J. Kimbrelling another witness of lawful age, being first duly sworn deposes and says:

Quest.

Please state if you are the Nancy J. Kimbrelling, the plff in this suit?

Ans.

Ans

I own.

Quest.

Please state how long you have been in possession of this land in dispute, 26 years

Ans.

Quest.

By whom was this land assigned to you in the partition of the lands of your father Robert Huff deceased? What Commissioners?

Ans.

Quest.

Carroll Bailey, Harvey Young & Thomas Huff. Were the lines and boundaries of your share of land thus assigned to you plainly marked and pointed out to you at or near the time it was assigned to you?

Ans.

Yes Sir.

Quest.

What acts of possession and ownership have been exercised by you and those for you on said land up to and along this line since its assignment to you by the said Commissioners?

Ans. We have

Used timber all along that line for 25 years

Quest.

Please state whether or not Samuel H. Huff the defendant in this suit has ~~adv~~ had full notice of your acts of possession above stated and has actually advised you as to the selling of

Maple, poplar or other timber up to and along this line?

Ans. Yes sir. he has had. He kept saying that the Mills would get out of here and we would have no chance to sell, I don't remember his referring to the maple.

Just. I here hand you what purports to be a deed, executed to you by Samuel H. Duff and others, for said land, I ask you to examine same, and state whether, or not, this deed is made in accordance with the assignment made to you by Carr Bailey and others at the time of partition of Robert Duff's land?

Ans. It don't cover our land.

Just. This deed bears date of March 24, 1902, how long after this date was it delivered to you, and by whom?

Ans. As well as I remember May Duff gave it to me the next day after it was brought back.

Just. Has there been any changes or alterations in it since it came into your possession?

Ans. No sir.

X Examination.

Just. Did you see the disputed line run by Carr Bailey and the

other Commissioners, selected to partition the lands of your father?

Ans No Sir. I did not see it.

Ques Did either of said Commissioners ever point-out to you, the line between your share of the land, and the share assigned to Samuel A. Duff?

Ans No Sir.

Ques Where did you then get your information as to the location of the disputed land?

Ans My husband showed it to me.

Ques Was Samuel A. Duff present when your husband pointed out to you said line?

Ans No Sir.

Ques How many full heirs were there to your fathers estate?

Ans Six.

Ques Was your fathers lands divided equally among these six heirs, by Commissioners Bailey and others?

Ans I reckon it was.

Ques How many tracts of land did your father own at the time of his death? And how much was in each tract?

Ans. That is something I really don't know. There was a 22 acre & a 50 acre tract of timbered land I don't know ^{how} much cleared land.

Ques The land in dispute is a part of the 50 acre tract of timber land is it not?

Ans Yes Sir.

Ques What became of the 22 acre tract of timber land?

Ans They sold it to Mr. Drake.

Ques You joined in the deed to Mr. Drake for the 22 acre tract; did you not?

Ans Yes Sir.

Ques I hand you a paper, purporting to be a deed from you and others to Martin Drake, for the 22 acre tract of land, please examine same, and say whether your signature is to said paper? Also file same with your deposition marked "Deed".

Examiner: The above question with any answer thereto and Exhibit "Deed" is excepted to by Counsel.

because the "22 acre tract" nor any part of it is in controversy, also, because irrelevant and immaterial. I do testify for Compt.

Ans. Yes sir, it is my signature. And I file the same as requested.

Ques. You ~~go~~ received one sixth part only of the dower of your mother, and the other cleared land owned by your father at his death, did you not?

Ans. Yes sir.

Ques. If the Commissioners assigned to you the disputed land in this suit, they then assigned to you more than one ^{sixth} half of the 60 acre tract of Woodland did they not?

Ans. Yes sir.

In your examination in chief, you were shown a paper purporting to be a deed from your brothers and sisters for the land in dispute, and which you saw was delivered to you by Mary Duff. Please file said deed with your deposition, marked "Kinberling Deed."

Ans. I hereby file same as requested.

Ques

Have you

Do you claim the land in controversy, by virtue of the partition made by Carr Bailey, Harvey Young, and Thomas Duff, Commissioners, or by virtue of adversary possession, or by the provisions of the deed just-filed by you, marked "Timberling Deed"?

Exception:

The above question with any answer thereto is excepted to by Counst. Counsel, because Original Bill filed in this case sets up grounds of claim and in what manner she claims?
Carter for Counst.

Ans

The land I drew out 25 years ago is the land I want

Reservation by Counst.

Quest.

Please state whether or not Mizpah Church house and also a road is not included in this one sixth share you have been asked about, and if there was not an allowance made you for the amount of land contained in these reservations?

Ans.

Quest.

The Church property was allowed. When this deed marked "Timberling Deed" was made and delivered you, were you informed that it was made by the rules and bounds of what is

Called the Carr Bailey division and
report.

Ans. Yes Sir.

Re Lewis examination

Ques Who informed you that the
deed was made according to the
Carr Bailey division and report?

Ans I reckon it was one of my Brothers, they
were there, I don't remember exactly.

Ques How many brothers have you?
And what are their names?

Ans I have two Brothers Samuel & Duff
& James & Duff.

And further this deponent says not
Harvey J. Kimberling

Here the plaintiff closed her
depositions in chief, and by agree-
ment the defendant proceeds with
the taking of his testimony, which
is to be read as evidence in this
Cause with the ^{same} weight - as if a
formal caption and certificate
were separately written thereto.

J. C. Noel for Deft.
J. R. Carter " Plff.

(26.)

Harvey Young, a witness of lawful age, being recalled, and duly sworn deposes as follows:

The plff. by Counsel excepts to the introduction of Harvey Young as a witness because he has heretofore been introduced and examined in chief by the deft in this cause, therefore his testimony that he may give should be excluded J. H. Curtis for Plff.

Ques Are you the same Harvey Young who has heretofore testified in this cause?

Ans Yes Sir.

Ques 2 Were you well and personally acquainted with Carr Bailey in his life time?

Ans. Yes Sir.

Ques 3 Were you sufficiently acquainted with his hand writing, to be able to tell when you see it?

Ans. Yes Sir I think so.

Ques 4 - I hand you a paper heretofore filed by you in your deposition, purporting to be the plat and report

made by him, yourself Thomas D. Duff, of the partition made of the lands of Robert Duff, please state if you know, in whose hand writing said report is?

Ans. The whole report is in Bailey's hand write with the exceptions of the words written in blue ink around the 50 acre tract.

Ques. I now hand you a paper, filed as an exhibit - in this cause marked "Kimberling Deed", please examine the same, and tell whether you find any scratches or erasures in the body of said deed; and if so point them out.

Ans. Here in one place it seems that 112 poles has been blotted a little - then down here in the description of the ~~shore~~ shore of the 50 A. tract it looks like there has been some scratches where the nine (9) is, at each place where it mentions 142 poles.

Cross Examination by the p[ro]ff.

Quest. Do you positively state the report you filed with your evidence as the Case Bailey report, is the Original Report made by The Commissioners

of whom you were one, in the partition
of the lands of Robert deff deff deff.

Ques.
Inest.

Yes Sir.
When did you first see this report?

Ans. I think it was the 2^d or 3^d day after
the Partition of the land.

Inest. When was the next time you saw it?

Ans. Well the next time I saw it, some 4 or 5
months ago brought it to my house some 6 or 8
months ago.

Inest. You have filed exhibit "Kimberling deed"
with your deposition, when did you
first see this deed?

Ans. I reckon I saw the deed when you
took deposition before, but I never
read a line.

Inest. You state there are erasures in the
"Kimberling deed" at "19½" in two places.
What figures words or letters have
been erased, please tell me.

Ans. I do not know.

Inest. Then you do not know there has
been any "erasure" at all do you?

Ans. I do not.

Inest. ~~Does the blotting at~~

Inest. You say there is a number "11½" which
shows a blot or scratch, is that number
any part of the numbers giving the note

and bounded of this land air
controversy?

Ans. It is not.

Quest. By inspection of this paper called
the Kimberling deed, you can observe
other blots, blurs and spreading of ink
in the formation of letters and
figures, can you not?

Ans. There may be some other letters that might
show a larger shade of ink on it, and
one figure.

Quest. Does the Kimberling deed indicate
and show that it is all the hand
writing of the same person?

~~The foregoing~~

Ans. Well all the writing seems to be the same
but there does look like there ~~is~~ might
be a difference in those lines (?)

Quest. Please examine the purported Bailey
Report and the paper purporting to be the
Kimberling deed and look where it
says, "beginning at a stake in a field
in the Stoddard Co, thence N. 30, W. etc and
state whether or not N. 25 $\frac{1}{2}$ W is the
proper degree, after a lapse of 25 years,

To run a line by?"

Ans.

Well I won't make any statement on that.

1 day attending
\$ 0.50

And further this deponent saith not.

Harvey Young

I as ~~M. Durham~~, a witness
of lawful age being duly sworn
deposes and says:

State James D. Duff, a witness
of lawful age being duly sworn
deposes and says:

State your age residence and
occupation?

Ans. 50 years old have been a farmer & Mechanic
until the past two years, & now reside
at Pennington Gap.

What relation are you to the
parties to this suit?

Ans

Brother to both parties.

Were you present when Carr Bailey,
Harvey Young and Thomas D. Duff
partitioned the lands of which your
father died seized among his heirs?

Ans I was there at home on the farm, but was not with them in the woods.

Ques Do you know the land in controversy in this suit-?

Ans Yes Sir.

Ques How near to it have you lived since the partition of the lands of your father was made by said Commissioners?

Ans I have lived in sight of it all the time until I moved to Pennsylvania Gap in May 1902.

Ques During the time you ~~has~~ lived in sight of said land, who claimed it, and exercised acts of ownership over it-?

Ans My Brother Samuel owned and controlled it.

Ques When did you first hear that the Complainant - and her husband G. W. H. Kimberling claimed the land in dispute?

Ans The first that I heard of it was when the law suit came up about some stove timber between Kimberling & Early.

Ques

I show you a paper filed in this suit purporting to be ~~the~~ the report of Commissioners ^{Com} Bailey, Harvey Young and Thos. D. Duff, of the partition they made of your father's land, please state whether you know who made said report, and how long you have known it?

Exposition

Same exceptions and objections are here made ~~as to~~ to said paper, as were made in Harvey Young's first statement, to which reference is here made.

Continue Court

Ans

Well it is ^{the original} Bailey's Report made by the Commissioners, I have known it ever since the day it was made and signed, except some of the time it was not in my possession, but the majority of the time it was.

Ques

I now hand you another paper filed as an exhibit in this Cause, marked "Kimberling Deed", please read the same, and state whether or not it now calls for the same land it called for & embraced at the time you signed and executed the same? and if not please show where it has

been changed,²

Exception. Court. he makes some exceptions and objections to above ~~and questions~~ & answers them as made to some in evidence of Mary J. Buff taken in this case, reference to which is here made. J. D. Leary, for plff.

Ans + It calls for more land than when I made that deed, it seems there is a scratch on that paper, where the deed now reads 14½ poles it then read 16½ poles.

Wms State if you know, how the taxes on the & a vere tract of which the land in controversy is a part, was paid up to the time the paper, called the Timberling Deed was made?

Exception: The above question and its attending answer is excepted to by the Court, because irrelevant to the issue in this case, and is also immaterial J. D. Leary, for plff.

Ans Each heir paid an equal part of the taxes on all the real estate my father owned, until the lands were transferred after that the taxes on my two shares came out against me, I don't know how the others paid.

Ques I believed you owned the share of the 50 acre woodland tract; adjoining the Kimberling share on the East; Up till two or three years back did you not?

Ans Yes sir. I owned it up until last June a year ago.

Ques While you owned the said share, did you ever know of the complainant or her husband ~~own~~ cutting any timber, or having it cut across her East line or your share?

Exception: The above question with any answer thereto is objected to by the pff. because witness is not a party to this suit, and because this portion of the land is not in dispute between the parties and is therefore irrelevant in every particular. ~~Admitted for Ques~~

Ans. Yes there was some wood cut by some of their people, I don't know who done it, and some Telephone posts.

Cross Examination by the pff.

Quest. ~~What~~ the deed that you, your brother and sisters made to Mary J. Kimberling to which you refer in your deposition made according to

the metes and bounds, courses
and distance of the assignments
and allotments made to you and
your brother and sisters in
the Carr Bailey report to which
you refer here in your deposition?

Ans. Yes sir it was, to the best of my knowledge.
Quest. Please examine the paper purporting to
be the Kimberling deed and state
if there is any reservation contained
in it for Church ~~house~~ property, or
roads?

Ans. I don't see any.
Quest. "The Bailey Report" shows it was made Sept. 21, 1897.
The deed made (that is the Kimberling deed bears
date March 24, 1902, I will now ask
you if the proper variations have been
allowed in the resurvey of this land by
which the said deed appears to ^{have} been made?
In other words, after examination
of these papers, do you think the call
N. 25 $\frac{1}{2}$ West as starting from the Sticks
line a correct call?

Ans. I can't answer the question direct, because
I am no surveyor.

Quest. You state in your examination in
chief, that Samuel N. Ruff has been in

possession of this land in dispute;
is it not a fact, that Geo. H. Rumberling
~~for~~ himself and by others cut timber
along this line and on this land
now in dispute and has done so
at different times with out any
objection being made by Samuel W. Duff?

Ans. He cut timber all over the land allotted to
him, but on this disputed land I never
knewed of him cutting any - because
if I understand - this disputed land is
away up in his share of land.

Quest. Does this Bailey Report as you call it
embrace all the lands of which
your father Robert Duff ~~had~~^{was} seized
and possessed at the time of partition?

Ans. It contained all but the 22 acres set
apart to pay a debt against his estate.

Quest. Who first called your attention to
what you call a scratch or how
did you come to notice what you
call the Change from "18½" to "19½".

Ans. This is the first time that I recollect of seeing
that deed since I signed it, but the first
time that I heard of it was the day when
they had that suit.

And further this deponent sogeth to nat.

James D Duff

Samuel H. Duff, another witness of lawful age being duly sworn deposes and says:

Ques. State your age, residence and occupation?

Ans. 56 years old. Wallens Creek Sec 20 Farming

Ques. Are you the defendant in this suit?

Ans. Yes Sir.

Ques. Who owns the land in controversy in this suit?

Ans. I own it.

Ques. By what right do you claim the said land; that is on what do you base your claim of ownership?

Ans. I inherited it from my fathers estate

Ques. How much of the 60 acre woodland tract of your fathers estate do you own and how was it assigned to you?

Ans. I own one sixth of it. It was assigned by

Commissioners - Over Bailey Thomas Duff
& Harry Jovvy.

Ques What share (by number) in said
fifty acre tract did you draw
in the partition made by said Commis-
sioners?

Ans No 3.

Ques Were you present at the time
said Commissioners made the partition
of the said 50 acre tract?

Ans Yes Sir.

Ques Where is the division line between
Lots No 2 & 3, as made by said Com-
missioners, in the partition of said 50 acre
tract?

The first shore is $15\frac{1}{2}$ poles wide the
2nd $16\frac{1}{2}$ poles and the 3rd $14\frac{1}{2}$ poles. At the
North end of the line between the 2^d
and 3^d shore - the Bailey reports calls
for a stake but a rock was placed
instead of a stake then the line
was run back parallel to the
stickly line - coming back to the
south end of it, calls for a stake at
that corner. There was no timber
marked on this line when we run
it. then when we come to the south

corner near the Stickley line the line struck a green white oak near the stickley line, - giving most of the tree to Kimburling. Then a stake is called for in the stickley line - to the best of my recollection the tree stands back 6 or 8 feet from the stickley line.

Ques In the preceding answer, among other things you say "the line was run back parallel to the stickley line", with what line or lines, was this division line run parallel?

Ans What I mean is that it was parallel with the East line of the 50.800 tract.

Is the division line run by said Commissioner between your land and Kimburlands, the same line claimed by the complainant, Mrs. Kimburling in this suit? if not what direction does it lie from the line claimed by said complainant, and how far?

Ans. To Sis. She claims the line 3 poles further West than the line they run.

Ques Who, if any body, has been in possession of the disputed land, since it was partitioned?

Ans. I have been in possession of that land ever since it was divided in 1877.

Ques Who was in possession of said land at the time this suit was instituted?

Ans I was in possession of it.

Ques I hand you ^{filed as an exhibit in this suit} a paper, purporting to be ~~and~~ the report of the commissioners who partitioned your fathers land, among his heirs, please state, if you know, whether it is the true and original report made by said commissioners?

Exception: Same exceptions are here made to said Report as heretofore made: Carter for plff.

Ans It is the true and original report, and as far as I can see it is unchanged except by the use of time. I have had it in my possession part of the time, and took special care of it.

Ques

I now hand you a paper filed in this Cause, marked "Kimbaling Deed"; please examine same, and state whether the same embraces the same land, as it now reads, that it did at the time you signed and executed the same? and if not, tell whether any changes or alterations have been made therein, and what those changes or alterations are?

Ans.

The first tract is all right and the second tract, but the 50 Acre tract calls for more land than when we made this deed, 3 poles more, we made the deed for 16 1/2 poles it now reads 19 1/2 poles.

Ques

How long have you been cutting and removing timber from the land in dispute?

Ans

Ever since we divided September 1877.

Ques

When did you first learn that the complainant, or her husband, disputed your right and title to this disputed land?

Not till after I sold ~~Early~~ this timber Sept 1902.

Ques Have you the deed made to you, by the other heirs of your fathers, estate, for lot no 3, of the 50 acre tract? If so please file same as a part of your deposition, marked "S. H. D".

Ans Yes sir. I have and file the same as requested.

Have you in your possession, the ~~two~~ the deeds, made to any of the other heirs of your fathers estate, for their shares in said 50 acre tract? If so please file same as a part of your deposition, marked "Deed to Heirs"?

Exception: Complainant here enters her exceptions and objections to the filing of deed of S. H. Duff also, the other deeds of the heirs of Robert Duff, filed as exhibits with S. H. Duff's deposition, because they are not made in conformity to the Original Bailey Report in the partition of Robert Duff's land, either in metes or bounds, courses, distance nor proper variations allowed.

L. A. Carter, for Plaintiff.

Ans. Yes sir, I have the deeds. Sarah C. Hill, Morika C. Steele, James D. Duff from Morely & others and James D. Duff from Morely & Wife. I file the same marked as requested.

Ques Have you the deed to your father for the 50 acre tract? If so please file same as a part of your deposition, marked, "Robert-Duff Deed."

Ans. Yes Sir, I file the same as requested.

Ques. State whether or not-at, any time, you ever either showed to Wiley Gibson, the line between your shore and that of the Complainant in the 50 acre tract; or told him about where the same was located. or ever had any conversation with about said line?

Ans I have no recollection of ever telling him anything about the line.

I Cross examination by Complainant:

Ques. Did you ever see Geo. H. Kricherling, Henry J. Kricherling or any one for them at work, cutting timber or making rails, or cutting fire wood, or doing anything else of the like kind on this land in dispute?

Ans. No Sir.

Ques. Is it or not a fact that Henry J. Kricherling has sold timber growing and standing along this line, and has it not been cut and hauled away without your entering any claim or protest?

Ans She has sold timber along the line but not across the line.

Just. Did you or not advise Nancy J. Kimberling to sell a maple tree now ~~is~~ standing on this land in dispute?

Ans. No Sir.

Just. ~~Did~~ So it not a fact that you came to Nancy J. Kimberling and advised her to sell maple trees to one William Horton standing near the line between you and Mrs. Kimberling?

Ans. I have no recollection of telling her to sell her timber.

Just. You have filed a number of deeds as exhibits with your deposition, purporting to convey their shares in Robert Duffs land. You will please state by what paper, you made these deeds?

Ans. We made them by the Bailey report.

Just. By the report you have filed with your deposition?

Ans. Yes Sir.

Just. Are the deeds you have each made to the other correct?

Ans. As far as I see - except this charge from 162 to 142 on the 50 acre ridge land.

Just. Was there any survey made by this Bailey paper a short time before you made these deeds; if so, who made it?

Ans. Mr Sprowls made the survey

Just. When you made the deed to Kimberlings, or when you run it the lines, where did you commence? at what point?

Ans. It was not surveyed at all, it was made by the Bailey report.

Just. Is there any difference in the courses and distances given in the Bailey report and in the deed you made to Nancy J. Kimberling? Please examine the two papers and say if there is any difference, where it is?

Exception. The foregoing question is excepted to because both papers are filed in the cause, and show for themselves.

J. C. Noel. for Def.

Ans. There is a little difference in the courses, and I believe in the distances, which I can explain by the sale of the 22 acre tract and a small portion of the 50 acre tract.

Just. Are you sure the Call, "N. $25\frac{1}{2}^{\circ}$ W." at the Beginning of the Kimberling lot is the proper and correct degree,?

Ans. I am sure that the $25\frac{1}{2}^{\circ}$ found the marks that Bailey gives in his report.

Just. Please examine "Bailey report" and also the Kimberling deed, and point out any place it speaks of marks, on the contrary is it not a stake each one calls for?

Ans They don't speak of marks - but the tree that was marked is not called for. They call for a stake at each corner.

Just. I ask you if N. $28\frac{3}{4}$ W. is not the proper degree by which to run this line starting at the Beginning of the Kimberling lot?

Ans I don't know that that is the correct degree to run it on.

Just. Are there any trees marked on the line between your self and Nancy J. Kimberling on this disputed land?

Ans No Sir.

Just. Did you see Mr. L. M. Carmichael run a line on N. $28\frac{3}{4}$ W. which Nancy J. Kimberling claims as her west line? ^{between you and her} if you did please state whether or not she or some one for ^{her} has not cut timber up to and along this line?

Ans I saw Mr Carmichael run a line, but I don't know what degree, Nancy J Kimberling had not cut timber up to this line until the suit, prior to that time she had cut timber up to the 16 1/2 pole line.

Just. Who had possession of the Bailey Report, from the time it was made up to Nov. 7, 1802?

Ans. After the Bailey report was ^{made} during my mother's life time it was filed with her papers, after that part of the time Brother Jim kept it, and part of the time it was at my house, but I think Brother

firm kept it the majority of the time.

Just. Did you or not accuse Robert Stule of destroying this paper?

Ans. No Sir, I certainly did not.

Just. Is it not a fact that G.W.N. Kimberling ~~had~~ doo Nancy J. Kimberling had a large double poplar cut and moved away from this land in dispute and which stood very near the line between you and Nancy J. Kimberling and did Matt Niaman Farnham work at it?

Ans. The tree was cut and moved away - but I don't know who cut it.

Just. Did you or not see G.W.N. Kimberling there at work on the tree?

Ans. I don't recollect, I won't say that I did or did not.

Just. State if you remember how close the lost line you saw run by Mr. Cornical ran on the west of this double poplar?

Ans. Probably $2\frac{1}{2}$ or 3 rods.

Just. Please state whether or not, since the institution of this suit, or a short time before, if you told Mrs. Sarah Roberts in this County and ~~at~~ her dwelling house or near it, that this was ^{above mentioned} Nancy J. Kimberling's timber, and that you

and that you never had claimed it?

Ans. No Sir.

Just. You say The Nancy J. Kumberting
Acre has been changed from "16½" to "19½"
pols in width? Who did it, and when?

Ans. I don't know who changed it, or when.

Just. What words, letters or figures are written
under "19½" & "19½"?

Ans. There is nothing under it, it has been erased
off and I placed in its place.

Just. How do you know there has ever been any
thing written where the "9½" are, but the "9½" them-
selves?

Ans. The paper being scratched shows something
has been erased.

Just. That is all you go by, is it?

Ans. Yes Sir: and comparing the deeds with the
Bailey report and Sprowls' field notes.

Just. Then can you state positively there has been any
change at all since the execution of this deed.

Ans. As I stated twice I find a change has been made
in the 16½ and the 19½.

Re-examination

Just. What are the corners to the East line
of the 60 acre tract?

Ans. A white oak at the S. E. Corner and a Chestnut oak at the N. E. Corner.

Ques. Are these corners still standing?

Ans. Yes Sir.

Ques. In the Bailey survey and partition of said 60 acre tract; did he lay off the side lines ~~parallel~~ of the different shares of in said land, parallel with said East-line?

Ans. None but the share of the lumbering ~~tract~~ which was run parallel with the East line.

Ques. Did Mr. Sprales run the East-line from the white oak to the Chestnut-oak? If so what degree did he report it?

Ans. Yes Sir, and reported $25\frac{1}{2}^{\circ}$

Ques. So that why the side lines of the different shares in the deeds to the heirs is made $26\frac{1}{2}^{\circ}$?

Ans. Yes Sir.

Records examined by plffs.

Ques. Then if ~~the~~ the lines start from a white oak and go to a chestnut oak, and not from a ~~stone~~ to a stone, the deeds are not made by the

corners, courses and distances, notes and
bounds of the so called Bailey plot, and they 2
exception. ~~That of~~

~~That~~ The foregoing question or any answer
thereto is objected to because misleading,
the Bailey report makes to attempt to
describe the East line of the 80 acre tract.
Further because the question assumes
that the said report designates stakes
as corners to the ^{East line of the} 80 acre tract, when
it does nothing of the kind.

J. C. Noel for Dep.

Ans. They are made parallel with the corners and
Bailey's report.

Quest. How much land did you with your
brother J. D. Duff and sisters allow to
Nancy J. Kimberling for land occupied by
Church property and a road, if any was allowed?

The foregoing question or any answer thereto
is objected to, because the deeds speak for
themselves, and are on file with the papers of
this suit.

J. C. Noel for Dep.


Ans. There wasn't any allowance made.

Quest. I will ask you if Mizpah Church ~~is~~ property
is not on the Nancy J. Kimberling ~~lot~~ tract,
and is there any reservation made in ~~said~~
deed to Nancy J. Kimberling for this property?

Ans I think something like a half. The Church acre
is embraced in this piece of land. And
there is no reservation made in deed
to town or lumbering. Mrs Kimberling
joined in the deed to the Church
properly.

And further this deponent says that
Samuel H. Duff Jr

Scale 20 ft = 1 inch



DRAKE LANE

B ch. Oak

Deed of 1879

Robert Duff

50 A.
Deed
1834
from
S. H. Duff.

Line claimed by Plett.
Obec (marked) obec (marked)

Line claimed by Deft. D 3925

N 28 3/4 W (in 1877 = N 30 W)

N 25 1/2 W

Lot 1

Lot 3

Lot 2

Doog woods
stump

Stake
agreed upon

A white oak

D

C

Commissioners Report

Nancy J. Kimberling & Son Chy
Samuel H. Duff

To locate the calls of the Nancy J. Kimberling Deed from the Duff heirs - I began at (A) a whitewash known as the beginning corner of the Robert Duff 50th tract from S. H. Duff dated Sept 1834. Thence with south line of said tract S 64 $\frac{1}{2}$ W 15.12 poles to (a) a point, agreed upon by the parties at law and all parties interested, to be the point or very near the point, from which Bailey runs in laying off the 2nd lot in the Partition of said 50th tract - thence with the calls of said deed (the red line of Plat 1) N 25 $\frac{1}{2}$ W 86.40 poles to (b) a point 23 links east of X a set stone - said to be on the Drake line. Thence with said line S 81 W 18 $\frac{1}{2}$ poles to (c) a stake. Thence S 26 $\frac{1}{2}$ E 92 $\frac{1}{2}$ poles to (d) a point on the stickley line, or south line of said Robert Duff 50th tract. thence N 64 $\frac{1}{2}$ E 18 $\frac{3}{4}$ poles to the beginning

The 3rd line of the above described tract passed about 1 pole east of a bush - marked as a live tree and had been lately cut down. Also about 3 poles east of a beech marked with old knife marks as a live tree.

To locate the West line of Lot No 2 as Plaintiffs claims it. We began at (e)

2 dogwoods & an oak stump $\frac{1}{2}$ pole west of (L) which point is claimed by Pless to be the same place that Bailey ran to. "on the stickley line" thence N 30 W (allowing $1\frac{1}{4}$ for magnetic declination since the year 1877) poles to (f). this line N 28 $\frac{1}{2}$ W brushed the standing marked bush before described, and passed other trees that had appearance of being marked - but not plain enough to my mind to be definite.

Defendant claims that the East line of Lot No 3 and the West line of Lot No 2 - begins at (O), a point on said Martin Drake line $16\frac{1}{2}$ poles from (b) thence S 25 $\frac{1}{2}$ E poles to (P) a point on the South line of said 50 A tract. (see ~~Blue~~ line of Plat)

Commissioner's opinion of the Location of the Partition lines of Lot No 2 as run by Dave Bailey - one of the Com. Who partitioned the 50 A Tract as well as the other lands of Robert Duff deceased -

After the lapse of more than a quarter of a Century it is nearly or quite impossible to determine the exact location of a line - unless some permanent and recognized land marks remain to designate it.

In this particular case there seems to be but one recognized point (a of Plat) and whether this be correct or incorrect we have no way of ~~ascertaining~~ as the distance-a-in Bailey's report is not given. If the diagram accompanying his report could be relied upon, it makes the distance Aa-something greater than we measured it upon the ground - but as part of Bailey's plat of the 50A tract is incorrect - we cannot rely upon any of it. For instance his report gives the length of line-ef - 70 poles - which is not so very far off in fact - but the diagram makes it only half the distance of line-a-d - which is $89\frac{1}{2}$ poles by Robert Duff deed of 1834 - and in truth is very nearly or quite the ~~the~~ distance. Whereas the line-a-b equal line-ef - by plat - actually measures 76 poles upon the ground.

Therefore, taking into consideration the unreliability of the plat - (which I think is merely given to show the order in which the Lots were numbered) - and the conflicting testimony of Dr. Kimberling & S.H. Duff the only living eyewitnesses of the actual surveying ~~and~~ by the Commissioners who divided these lands - I think your Commissioner is constrained to rely solely upon the actual

Working of these Commissioners report - which is filed in
this Cause - and thereby finds and locates
the lines of Lot No 2 as follows - Beginning
at (a on plat) the admitted South East corner of
said lot thence N 30 W (allowing $1\frac{1}{4}^{\circ}$ for magnetic
declination from the year 1877) (with the black line
of plat) 90 poles to (h) a stake S 62 W (allowing proper variation)
16 $\frac{1}{2}$ poles to (i) a stake - thence S 30 E (allowing $1\frac{1}{4}^{\circ}$)
90 poles to (j) a stake on the Stickley line & with
the same N 62 E (allowing proper variation) 16 $\frac{1}{2}$ poles
to the beginning - I believe this to be the
actual running of Com. Bailey as near
as it is now possible to obtain.

Objection No 1. It is true that the first
line-a h- calls with line of Lot No 1
and we think that line of Lot No
1 should have been parallel to line
A B. but Bailey does not say so. He
does not even give the degree of the
Duff deed made in the year 1834
and it seems that had he intended
to have had the lines parallel he
would have run either on the original
call of the deed, or that degree modified
by the natural declination made from

the year 1834 to 1877. The original call is $N 28^{\circ} W$ - from which we subtract $2^{\circ} 4'$ - making the bearing of the line $N 25^{\circ} 51' W$ in the year 1877. It may have been slightly greater than this calculated bearing - As we find the bearing in the year 1903 from (A) the white oak corner to (B) the chestnut oak corner (both still standing) to be not quite $N 25^{\circ} \frac{1}{2} W$. So the line - AB - may have been, possibly, $N 26^{\circ} \frac{3}{4} W$ in the year 1877 - but even then Bailey would have been $3^{\circ} \frac{1}{4}$ (as he was $4^{\circ} 4'$ in the first count $N 25^{\circ} 51' W$) off of a line parallel to the East line (AB) of said 50 A. tract.

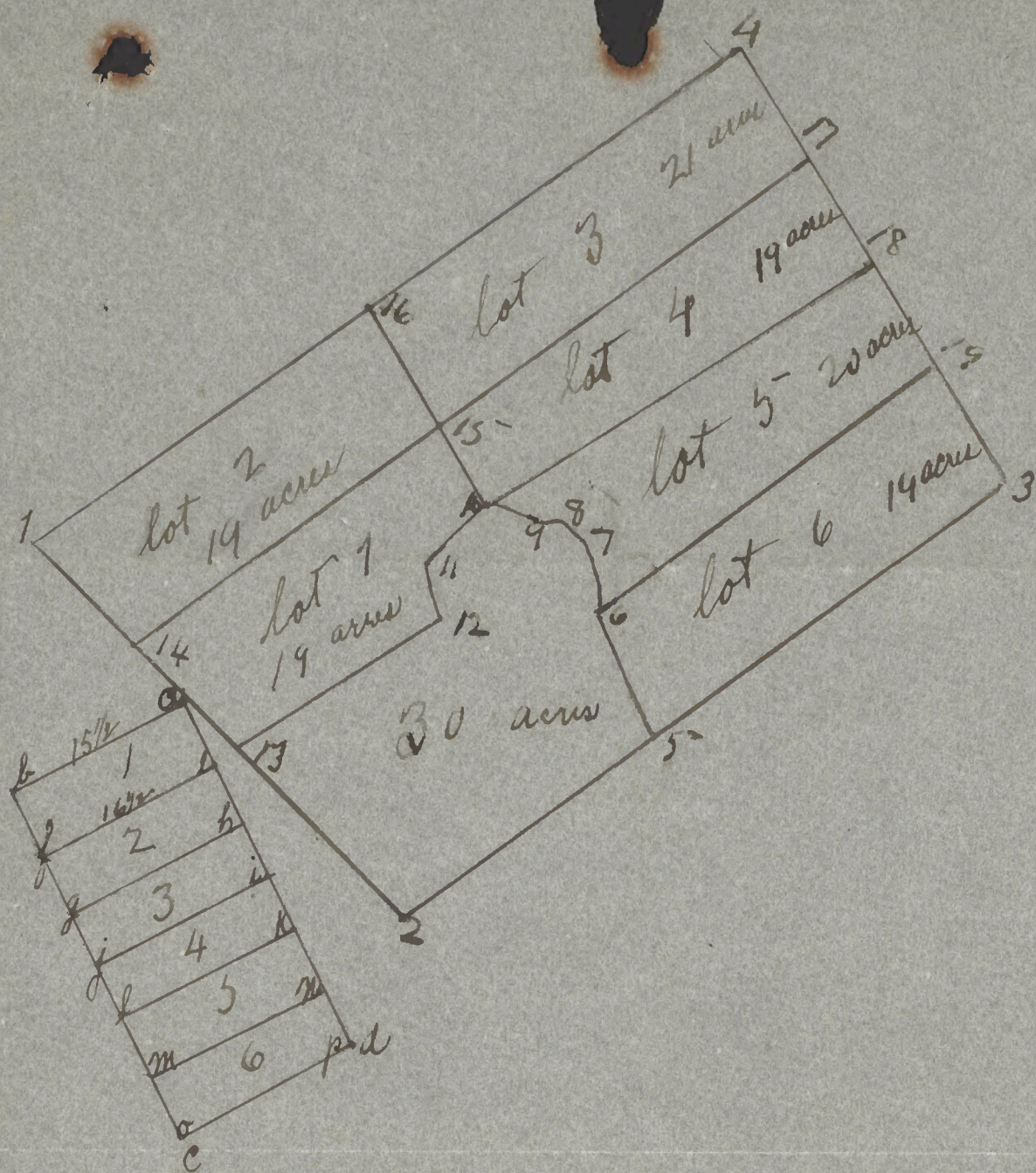
Objection 2nd It is true that the 2^d line of report calls for Martins Drakes line - And when we stop on this line we fall short of 90 poles - at K) - thence with said line $S 81^{\circ} W / 16 \frac{1}{2}$ poles to (L) thence with pencil line $S 30^{\circ} E$ (now $28^{\circ} \frac{3}{4}$) $92 \frac{1}{2}$ poles to M thence $N 62^{\circ} E$ (with U) $15 \frac{1}{2}$ poles to the beginning - no one of the lines of the same length - But we have no evidence that the Martin Drake line was located, or its magnetic bearing ascertained prior to the year 1877 - the date of said Drakes deed - But should it have been, it is manifest that Bailey's actual running of this 2^d line was parallel to the Shickly line; (That is the south line of the Robert suff 50 A survey) for his East & West lines are parallel and of the same length, and the North & South lines are of the same length, therefore the Figure is a parallelogram - and the north line is of the same degree as the south - which is the Shickly line - or Robert

Duff 50 A line, the bearing of which was known
to Bailey - as this was the land he was partitioning

Respect Submitter

L.M. Carnical

Bill of Cost sponge & refuting & plates \$ 6.⁵⁰ 50
 26th taking exp. 19.00
 \$ 25.50
 witness 9.38
 \$ 34.88



The undersigned being chosen by the parties, the wife and children of Robert Duff to partition the lands of the said Duff among said parties, have performed that duty and beg leave to report:

We have laid off and assigned to Margaret Duff, the wife of the said Robert Duff 30 acres of said lands, be the same more or less as her entire interest in the same and bounded as follows, to-wit:

Beginning at a hickory, corner to the stickley land, and with a line thereof S.35 E. 74 poles crossing Wallens Creek to a black walnut by a fence, thence N.68 E 32 poles to a double ironwood on the north bank of said creek and up the same as it meanders 16 poles to a bridge across said creek, thence up said creek as it meanders 12 poles to a stake, thence N.24 E.10 poles, leaving said creek, to a stake at the mouth of the old lane and with the same N.40 W. 20 poles to a stake at the main road and with said road S.70 W.16 poles to a stake in said road, thence N.30 W.56 poles to a stake on the said Stickley line and with the same S.48 W. 51 poles to the Beginning. Including the mansion house and several other buildings. See Fig. 2,5,6,7,8,9,10,11,12,13,2.

And we have laid off and allotted the remainder of said lands as follows, to-wit:

To William D. Morely & wife lot No. 1, containing 19 acres be the same more or less and bounded as follows, to-wit: Beginning at a stake in a road, corner to Margaret Duff's land & on the Stickley line & with said Stickley line N. 48 E. 41 poles passing a white oak, corner to said Stickley's land to two white-oaks and 2 dogwoods, pointer, corner to lot No. 2 & with a line thereof S.34 E.88 poles to a stake, thence S.60 W.27 $\frac{1}{2}$ poles to a stake at the mouth of the old lane, corner to the said Margaret Duff's land & with the same N. 40 W. 20 poles to a stake at the main road & with the same S.70 W.16 poles to a stake in said road, thence N. 30 W. 56 poles to the Beginning. See Fig. 13,14,15,10,11,12,13.

To James D. Duff lot No. 2 & bounded as follows, to-wit, Beginning at 2 white-oaks and 2 dogwoods, pointers, corner to lot No. 1 & with a line thereof S. 34 E. 88 poles to a stake, thence N.60 E. 30 poles to a stake on Thomas Duff's line & with same N.33 W.100 poles to 2 white-oaks corner to said Thomas D. Duff's land & also corner to Samuel H. Duff's Sr. land & with a line of the latter

S. 48 W. 33 poles to the Beginning. See Fig. 14,15,16,1,14, containing 19 acres be the same more or less.

To Samuel H. Duff lot No. 3 containing 21 acres be the same more or less & bounded as follows, to-wit: Beginning at a stake, corner to lot No. 2, on Thomas D. Duff's line & with a line of lot No. 2, S. 60 W. 30 poles to a stake, corner to lots No. 2 & 4 & with a line of the latter S. 32 E. 110 poles to a stake on the Taylor line & with the same N. 60 E. 32 poles to a stake, corner to said Thomas D. Duff's land & with a line thereof N. 33 W. 110 poles to the Beginning. See Fig. 16,15,17,4,16.

To George W. H. Kimberling & wife lot No. 4, containing 19 acres be the same more or less & bounded as follows, to-wit: Beginning at a stake at the mouth of the old lane corner Margaret Duff's land & corner to lots No. 5 & 1 & with a line of the latter N. 60 E. $27\frac{1}{2}$ poles to a stake corner to lot No. 3 & with a line of the same S. 32 E. 110 poles to a stake on the Taylor line & with same S. 60 W. 28 poles to a stake, corner to lot No. 5 & with a line of the same N. 31 W. 110 poles to the Beginning. See Fig. 10,15,17,18,10.

To Martha C. Duff lot No. 5, containing 20 acres be the same more or less & bounded as follows, to-wit: Beginning at a stake at the mouth of the old lane, corner to Margaret Duff's land and corner to lots No. 1 & 4 & with a line of lot No. 4 S. 31 E. 110 poles to a stake on the Taylor line & with the same S. 60 W. 30 poles to a stake corner to lot No. 6 & with a line of the same N. 33 W. 102 poles to a double ironwood on the north bank of said creek corner to said Margaret Duff's land & with lines thereof & up said creek as it meanders 16 poles to the bridge, thence up said creek as it meanders 12 poles to a stake, thence N. 24 E. 10 poles to the Beginning. See Fig. 10,18,19,6,7,8,9,10.

To Sarah E. Duff lot No. 6 containing 19 acres, be the same more or less & bounded as follows, to-wit: Beginning at a double ironwood on the north bank of said creek corner to Margaret Duff's land & also corner to lot No. 5 & with a line of the same S. 33 E. 106 poles to a stake on the Taylor line & with the same S. 60 W. 30 poles to a small buckeye, thence N. 35 W. 102 poles to a black walnut corner to said Margaret Duff's land & with a line of the same N. 68 E. 32 poles to the Beginning. See Fig. 6,19,3,5,6.

Fig. a,b,c,d,a represent a 50 acre woodland of said Robert Duff, which we have divided into 6 equal shares, and we have allotted to the said George W.H. Kimberling lot No. 2 of said tract containing $8 \frac{1}{3}$ acres more or less after deducting the part of the church and school house lot embraced in this lot and bounded as follows, to-wit: Beginning at a stake in a field on Stickly's line corner to lot No. 1 and with lines of the same N. 30 W. 90 poles to a stake on ~~the~~ Martin Drake's line & with the same westwardly $16 \frac{1}{2}$ poles to a stake, thence S. 30 E. 90 poles to a stake on the said Stickly line & with the same Eastwardly $16 \frac{1}{2}$ poles to the Beginning. See Fig. e,f,g,h,e.

The rest of the heirs agreed to hold the balance of the said tract of land together for the present. Lots No. 1 & 2 have access to Margaret Duff's spring, lot No. 4 has access to a small spring near a lynn, lot No. 6 has access to the said first spring. Margaret Duff is to have timber off of any part of the said 50 acre woodland tract, if her timber should give out.

Sept. 21st, 1877.

All of which is respectfully submitted.

Carr Bailey)
Thomas D. Duff):- Comrs.
Harvey Young)

Virginia Lee County, to-wit;

In the office of the Clerk of the County Court for said county the 6th day of November 1902. The foregoing writing was presented and admitted to record

Teste; B.M. Morgan, Clerk.

Recorded in Deed Book No. 39, page 349.

Examined Nov. 7th, 1902.

Samuel H. Duff
ads { in Chg.

Nancy J. Kimberling.

"Exhibit No 1"
with Defendants
Answer.

H. C. T. EWING
County Clerk, Lee County
JONESVILLE, VIRGINIA

Received of H. C. T. Ewing, Clerk
of Circuit Court Lee County the
following titles papers filed by
me in the Chancery cause
latity pending in said court of
Nancy J. Kimberling vs. J. H. Duff.
to-wit:

Robert Duff	from Samuel H. Duff - deed
James D. Duff	" W. D. Morely & others "
Martha C. Duff	" James D. Duff & others "
Sarah E. Hill	" James D. Duff & others "
James D. Duff	" W. D. Morely & others "
Robt. Duff	" Partition of land of "
Martin Drake	" Samuel H. Duff et al "
J. H. Duff	" Jas. D. Duff et al "

Ordered to be turned over to him by final decree in said cause
given under my hand. This June
24th 1904
Samuel H. Duff Jr

Receipt - Sam
H. Duff for
Deed.

AMERICAN AIRWAYS
COMMERCIAL AIRCRAFT
W.C. KEMING

OFFICE OF
County Court Lee County,

B. M. MORGAN, Clerk.

Jonesville, Va.,

November 14th, 1902.

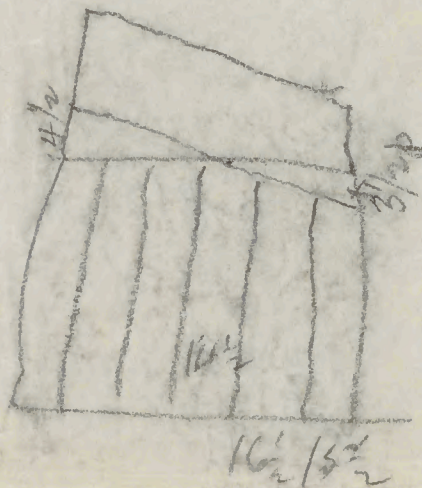
Mr. Sam. Henry Duff,

Pennington Gap, Va.

Dear Sir;- Inclosed you will find the Partition that you asked me to send to you by mail. The same has been recorded as requested.

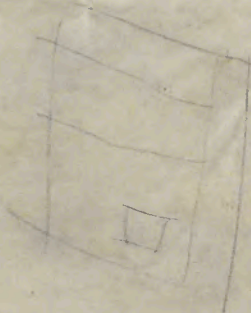
Yours very truly,

B. M. Morgan.



Barley

$$\begin{array}{r} 89\frac{1}{2} \\ 152 \text{ no 1} \\ \hline 73\frac{1}{2} \\ 162 \text{ no 2} \\ \hline 4 \overline{) 56\frac{1}{4}} \\ 14\frac{1}{16} \end{array}$$



Manager

To the

OFFICE OF THE
COMMISSIONER OF THE
LAND OFFICE
WASHINGTON, D.C.

Know all Men by these Presents, That we G. W. H. Kimberling
and J. D. Carter
are held and firmly bound unto the Commonwealth of Virginia, in the sum of \$200.00
Two hundred Dollars,
to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves
and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly
by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and
also of any claim or right to discharge any liability to the Commonwealth arising under this bond, or by
virtue of said office, post or trust, with coupons detached from the bonds of this State. Sealed with our
seals, and dated this 2nd day of April one thousand nine
hundred and three.

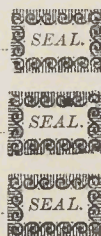
THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas ~~the above bound~~ Nancy J.
Kimberling
on her bill in chancery against Samuel H. Duff

addressed to the Judge of the Circuit Court of the County Lee
has obtained from the said Judge an injunction to enjoin and restrain the said Samuel H.
Duff, his agents or employees, from cutting and
removing the timber in the bill and proceedings
mentioned.

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding
the said injunction, that the plaintiff shall not have the benefits thereof until She
or some one for her, shall enter into a bond, with good security, in the clerk's office of the
said court, payable to the Commonwealth of Virginia, in the penalty of (\$200.00)
Two hundred dollars, and conditioned to pay all such costs as may be awarded against the
said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now,
therefore, if the said Nancy J. Kimberling shall pay all such costs as
may be awarded against her, and all such damages as shall be incurred in case the said injunc-
tion be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

G. W. H. Kimberling
J. D. Carter



In the Clerk's Office of the _____ Court of the _____ of _____
This day personally appeared before me _____, Clerk
of the _____ Court of the _____ of _____
_____, and made oath
that _____ estate, after the payment of all _____ just debts, and those for which he _____ bound
as security for others and expect to have to pay _____ worth the sum of _____
dollars, over and above all exemptions allowed by law.

Given under my hand, this _____ day of _____, 19 _____

Clerk.

Nancy J. Kimberling

to {

INJUNCTION
BOND.

Commonwealth.

The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon *Samuel H. Duff*

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules
to be held for the said Court, on the *3rd* Monday in *May* 1903,
to answer to a bill in chancery, exhibited against *him* in our said Court by

Nancy J. Kimberling

And have then there this writ. Witness. A. B. MUNSEY, Clerk of our said Court, at
the court-house, the *2nd* day of *April* 1903, and in the
12 *7th* year of the Commonwealth.

A. B. Munsey Clerk

Executed April the 6/1903 at 8½ o'clock
A.M. by delivering to Samuel
H. Duff Sen. a true copy of the within
Writ.

Executed
At W. J. Milham & Co

J. H. Hall, Jr.

Form No. 300½

Nancy J. Kimberling

vs.

SUBPOENA
IN
CHANCERY.

Samuel H. Duff

J. D. Carter p. q.

To 2nd May Rules

Lee Circuit Court.

The necessary bond having been given the
defendant Samuel H. Duff his agents and
employees are each hereby enjoined from
suing and removing the timber mentioned
and described in the bill, until the future
order of the court.
Given under my hand this the 2nd
day of April 1903.
A. B. Munroe Clerk